



**Twenty-Third Report of  
KSV Kofman Inc.  
as CCAA Monitor of  
Eddie Bauer of Canada, Inc. and  
Eddie Bauer Customer Services Inc.**

**July 10, 2018**

## Contents

## Page

|     |   |   |
|-----|---|---|
| 1.0 | Introduction .....                                      | 1 |
| 1.1 | Purposes of this Report.....                            | 2 |
| 1.2 | Currency .....  | 2 |
| 2.0 | Background .....  | 3 |
| 2.1 | Sale of Assets, Claims Procedure and Distributions..... | 3 |
| 3.0 | Assets under Administration .....                       | 3 |
| 3.1 | Cash .....  | 3 |
| 3.2 | Tax Refunds .....                                       | 4 |
| 4.0 | Monitor's Proposed Discharge.....                       | 4 |
| 5.0 | Overview of the Monitor's Activities .....              | 5 |
| 6.0 | Professional Fees.....                                  | 5 |
| 7.0 | Conclusion and Recommendation .....                     | 6 |

## Appendices

### Appendix

### Tab

|   |   |
|---|---|
| Monitor's 11 <sup>th</sup> Report to Court dated June 13, 2011 (without appendices) ..... | A |
| Interim Statement of Receipts and Disbursements .....                                     | B |

COURT FILE NO: 09-8240-CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.

TWENTY-THIRD REPORT OF  
KSV KOFMAN INC.

July 10, 2018

## 1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on June 17, 2009, as amended and restated (the "Initial Order"), Tenere of Canada Inc. (formerly, Eddie Bauer of Canada, Inc.) ("Tenere") and Yuma Customer Services Inc. (formerly, Eddie Bauer Customer Services Inc.) ("Yuma") (jointly, the "Company") were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed as Monitor (the "Monitor").
2. As a result of the acquisition of Richter's Toronto restructuring practice by Duff & Phelps Canada Restructuring Inc. ("D&P") on December 9, 2011, D&P replaced Richter as Monitor pursuant to a Court order dated December 12, 2011. On June 30, 2015, D&P was acquired by KSV Kofman Inc. ("KSV"). Pursuant to a Court order made on July 10, 2015, D&P's ongoing mandates were transferred to KSV, including acting as Monitor in these proceedings. The licensed trustees/restructuring professionals overseeing this mandate have remained unchanged since its outset.
3. This report ("Report") is filed by KSV in its capacity as Monitor.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Company and these proceedings;
  - b) summarize the outcome of Tenere's tax objection process commenced in 2010, which resulted in the recent collection of Federal and Provincial tax refunds totalling approximately \$4.7 million;
  - c) provide an overview of the Monitor's activities since its Twenty-Second Report to Court dated December 12, 2017 (the "Twenty-Second Report");
  - d) recommend that the Monitor be discharged of its duties and obligations under the Initial Order and other Court orders made in these proceedings, subject to filing a certificate with this Honourable Court (the "Discharge Certificate");
  - e) summarize the few outstanding issues in these proceedings which the Monitor intends to complete prior to filing the Discharge Certificate;
  - f) discuss the fees and disbursements of the Monitor and its counsel, Lax O'Sullivan Lisus Gottlieb LLP ("LOLG"), from June 1, 2017 to June 30, 2018 and seek approval of same; and
  - g) recommend that this Honourable Court make an order:
    - discharging the Monitor upon the filing of the Discharge Certificate;
    - releasing the Monitor from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting as Monitor, save and except for any gross negligence or wilful misconduct on the Monitor's part;
    - approving the fees and disbursements of the Monitor and LOLG for the period June 1, 2017 to June 30, 2018;
    - approving an accrual of \$50,000 (the "Fee Accrual") to cover the remaining fees and disbursements of the Monitor, LOLG, Goodmans LLP ("Goodmans"), the Company's counsel, and Deloitte LLP ("Deloitte"), the Company's tax advisor, to be incurred until the filing of the Discharge Certificate; and
    - approving the Monitor's activities, as described in this Report.

## 1.2 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

## **2.0 Background**

1. The Company sold outerwear, apparel and accessories.
2. The Eddie Bauer brand is internationally recognized - at the commencement of the US and Canadian insolvency proceedings, Eddie Bauer products were available at approximately 370 retail and outlet stores in North America, including 36 retail stores and one warehouse located in Canada, as well as through catalogue and website sales. The Company employed 933 individuals in Canada. The workforce was not unionized and the Company did not maintain a registered pension plan.
3. On June 17, 2009, Amargosa, Inc. (formerly, Eddie Bauer, Inc.) ("Amargosa"), the Company's US-based parent company, and certain other US affiliates (collectively, "Eddie Bauer US"), commenced reorganization cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Chapter 11 Proceedings"). The Company was not subject to the Chapter 11 Proceedings. Pursuant to the First Amended Joint Plan of Liquidation filed in the Chapter 11 Proceedings (the "Plan"), EBHI Liquidating Trust, successor-in-interest to Amargosa, Inc. ("EBHI Trust") was formed. Pursuant to the Plan, the shares of Tenere were transferred to EBHI Trust.

### **2.1 Sale of Assets, Claims Procedure and Distributions**

1. The Monitor's Eleventh Report to Court dated June 13, 2011 (the "Eleventh Report") provides details of the Court-approved sale of substantially all of the Company's business and assets, the value allocation between the Company and Eddie Bauer US, the results of the claims procedure and distributions to creditors made over the course of these proceedings. A copy of the Eleventh Report is attached as Appendix "A", without appendices.
2. There are no remaining creditors of Tenere. Pursuant to orders of this Honourable Court made on May 12, 2010, August 12, 2010 and June 23, 2011, all creditor claims have been paid in full and approximately \$5.1 million has been distributed to Tenere's shareholder, EBHI Trust, net of withholding taxes. Distributions made to EBHI Trust, in its capacity as shareholder, have been made pursuant to a Court order made on June 23, 2011 (the "Distribution Order") and in accordance with a Court-approved Settlement Agreement dated May 10, 2011 among Tenere, Yuma and Canada Revenue Agency ("CRA").
3. CRA is the sole remaining creditor of Yuma; however, there are no remaining funds or realizable assets in Yuma's estate.

## **3.0 Assets under Administration**

### **3.1 Cash**

1. There is presently approximately \$1.2 million in Tenere's trust account maintained by the Monitor ("Trust Account"). An interim statement of receipts and disbursements for the period ended July 8, 2018 is attached as Appendix "B".

### 3.2 Tax Refunds

1. For approximately seven years, the sole outstanding issue in these proceedings has been a “Competent Authority” transfer pricing refund application (“Competent Authority Application”) being handled by Gowling WLG (Canada) LLP, formerly Gowling Lafleur Henderson LLP (“Gowlings”).
2. Gowlings was engaged by the Monitor, on behalf of Tenere, on a contingency fee basis in accordance with a Court order made on December 8, 2009. In accordance with the retainer arrangements approved by this Honourable Court, Gowlings is entitled to a contingency fee equivalent to 33% of the tax savings (which amount includes interest earned on any tax refunds) resulting from the Competent Authority Application.
3. In the Twenty-Second Report, the Monitor reported that the Competent Authority Application was nearing completion. Since the Twenty-Second Report, the Competent Authority Application has been successfully resolved, resulting in Federal and Provincial tax refunds (including interest) of approximately \$4.7 million, as follows:

| Date              | Tax Authority               | Amount (\$000s) |
|-------------------|-----------------------------|-----------------|
| February 15, 2018 | CRA                         | 3,624           |
| March 29, 2018    | Government of Alberta       | 284             |
| June 15, 2018     | Ontario Ministry of Finance | 832             |
| Total             |                             | 4,740           |

4. Gowlings has now been paid approximately \$1.6 million, representing its share of the tax refunds recently collected. At this time, there are no further amounts owing to Gowlings and no further tax refunds recoverable from the Competent Authority Application.

### 4.0 Monitor’s Proposed Discharge

1. With the completion of the Competent Authority Application, there are no further assets to be realized upon. Accordingly, the Monitor is recommending that it be discharged upon the filing of the Discharge Certificate as, subject to completing the outstanding sundry matters detailed below, its duties and responsibilities under the Initial Order and other orders granted in these proceedings will have been completed.
2. In the next few weeks, the Monitor intends to:
  - pay a final distribution to EBHI Trust in accordance with the Distribution Order, net of withholding tax of 25% which is to be paid to CRA;
  - work with Deloitte to prepare and file Tenere’s final withholding tax filings (referred to as “NR4 returns”). These are required to be filed within 45 days following payment of the final distribution to Tenere’s US-based shareholder, EBHI Trust;

- pay any final post-filing professional fees from the Fee Accrual; and
  - attend to any other sundry matters not set out above in order to complete the Monitor's administration.
3. The Monitor intends to file the Discharge Certificate once these sundry matters are addressed.

## **5.0 Overview of the Monitor's Activities**

1. Since the date of the Twenty-Second Report (December 12, 2017), the Monitor's activities have included:
- corresponding regularly with representatives of Gowlings regarding the Competent Authority Application;
  - assisting Gowlings to retrieve and provide information required to advance the Competent Authority Application process;
  - corresponding with Deloitte to prepare and file the Company's tax returns and other sundry tax matters;
  - corresponding periodically with legal counsel to the Company, EBHI Trust and the Monitor in respect of these proceedings;
  - preparing and providing financial information to EBHI Trust's accountants as required for EBHI Trust's tax and other statutory filings;
  - reviewing correspondence received from CRA;
  - providing Gowlings with sundry information in order to respond to periodic information requests submitted by CRA;
  - collecting the final Federal and Provincial tax refunds;
  - performing activities on behalf of the Company in accordance with a Court order made on August 20, 2009 enhancing the Monitor's powers, including making payments from the Trust Account, filing monthly HST returns, filing annual corporate tax returns and pursuing tax refunds; and
  - drafting this Report and reviewing the accompanying motion materials.

## **6.0 Professional Fees**

1. The fees and disbursements of the Monitor and LOLG from the commencement of these proceedings through May 31, 2017 were approved pursuant to a Court order made on June 22, 2017.
2. The fees and disbursements (excluding HST) of the Monitor and LOLG from June 1, 2017 through June 30, 2018 total approximately \$67,000 and \$2,000, respectively.

3. Detailed invoices in respect of the fees and disbursements of the Monitor and LOLG for the referenced billing periods are provided in the affidavits filed by KSV and LOLG in the accompanying motion materials.
4. The average hourly rate for KSV and LOLG for the referenced billing periods was \$552.41 and \$620.00, respectively.
5. The Monitor is of the view that the hourly rates charged by LOLG are consistent with the rates charged by corporate law firms practicing in the area of insolvency in the Toronto market and that the fees charged are reasonable and appropriate in the circumstances.
6. The Monitor is also of the view that the Fee Accrual is reasonable and appropriate in the circumstances as it provides for the estimated fees to be incurred by the Monitor, LOLG, Goodmans and Deloitte prior to the filing of the Discharge Certificate. The Monitor has prepared the fee estimate based on discussions with each of those firms. To the extent there is any surplus in the Fee Accrual following the filing of the Discharge Certificate, the Monitor will distribute the balance of the funds to EBHI Trust, net of withholding tax, in accordance with the Distribution Order.

## 7.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (1)(g) of this Report.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc." in a cursive, stylized font.

**KSV KOFMAN INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
TENERE OF CANADA, INC. AND YUMA CUSTOMER SERVICES INC.  
AND NOT IN ITS PERSONAL CAPACITY**



## **Appendix “A”**

# **RSM Richter**

## **Eleventh Report of RSM Richter Inc. as CCAA Monitor of Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc.**

**RSM Richter Inc.**  
Toronto, June 13, 2011

# Table of Contents

|     |  |    |
|-----|--|----|
| 1.  | INTRODUCTION.....  | 1  |
| 1.1 | Purposes of this Report  | 2  |
| 2.  | BACKGROUND .....   | 3  |
| 2.1 | The Transaction  | 3  |
| 2.2 | Claims Procedure   | 4  |
| 2.3 | Distributions of the Canadian Proceeds and Certain Tax Refunds | 5  |
| 3.  | ASSETS UNDER ADMINISTRATION .....                              | 5  |
| 3.1 | Cash   | 5  |
| 3.2 | Potential Tax Refunds  | 5  |
| 4.  | AMENDED CLAIM OF EBHI TRUST .....                              | 6  |
| 5.  | CRA SETTLEMENT AGREEMENT.....                                  | 7  |
| 5.1 | Recommendation re: Settlement Agreement                        | 8  |
| 6.  | PROPOSED DISTRIBUTIONS.....                                    | 8  |
| 6.1 | EBHI Trust   | 8  |
| 6.2 | CRA  | 9  |
| 6.3 | Holdback   | 10 |
| 6.4 | Recommendation re: Proposed Distributions                      | 11 |
| 7.  | COMPANY'S REQUEST FOR AN EXTENSION .....                       | 11 |
| 7.1 | Cash Flow  | 11 |
| 8.  | OVERVIEW OF THE MONITOR'S ACTIVITIES .....                     | 12 |
| 9.  | CONCLUSION AND RECOMMENDATION .....                            | 13 |

## Table of Appendices

|              |  |
|--------------|--|
| Appendix “A” | Amended and Restated Initial Order of the <i>Ontario</i> Superior Court of Justice (Commercial List) dated June 17, 2009 |
| Appendix “B” | Statement of Receipts and Disbursements for the period ending June 8, 2011   |
| Appendix “C” | Settlement Agreement dated May 10, 2011  |

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
- COMMERCIAL LIST -**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EDDIE BAUER OF CANADA, INC. AND  
EDDIE BAUER CUSTOMER SERVICES INC.**

**ELEVENTH REPORT OF RSM RICHTER INC.  
AS CCAA MONITOR OF  
EDDIE BAUER OF CANADA, INC. AND  
EDDIE BAUER CUSTOMER SERVICES INC.**

**June 13, 2011**

**1. INTRODUCTION**

Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on June 17, 2009, as amended and restated (the "Initial Order")<sup>1</sup>, Tenere of Canada Inc. (formerly, Eddie Bauer of Canada, Inc.) ("Tenere") and Yuma Customer Services Inc. (formerly, Eddie Bauer Customer Services Inc.) ("Yuma") (jointly, the "Company") were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed the Monitor (the "Monitor"). A copy of the Initial Order is attached as Appendix "A".

This report ("Report") is filed by Richter in its capacity as Monitor.

---

<sup>1</sup> The Initial Order was amended and restated on consent shortly after its issuance to include provisions requested by counsel to certain landlords and by counsel to the US DIP Lender.

On June 17, 2009, Amargosa, Inc. (formerly, Eddie Bauer, Inc.) (“Amargosa”), the Company’s US based parent company, and certain other US affiliates (collectively, “Eddie Bauer US”), commenced reorganization cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “US Court”) (the “Chapter 11 Proceedings”). The Company is not subject to the Chapter 11 Proceedings. Pursuant to the First Amended Joint Plan of Liquidation filed in the Chapter 11 Proceedings (the “Plan”), EBHI Liquidating Trust, successor-in-interest to Amargosa (“EBHI Trust”) was formed. Pursuant to the Plan, the shares of Tenere were transferred to EBHI Trust.

## 1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information about the Company and these proceedings;
- b) Provide an update on the funds available for distribution, the status of the potential tax refunds owing to Tenere and an amended proof of claim filed by EBHI Trust;
- c) Summarize the terms and conditions of a settlement agreement dated May 10, 2011 between the Company and Canada Revenue Agency (“CRA”) (“Settlement Agreement”);
- d) Set out the Company’s proposed distributions totalling approximately \$5.4 million (“Proposed Distributions”);
- e) Provide an overview of the Monitor’s activities since December 7, 2010, the date of its last report; and
- f) Recommend that this Honourable Court make an order:
  - Approving the Settlement Agreement;
  - Authorizing and directing the Monitor to make the Proposed Distributions on the Company’s behalf;
  - Authorizing further distributions from Tenere to EBHI Trust, in its capacity as Tenere’s sole shareholder, without further Court order;

- Granting the Company's request for an extension of its stay of proceedings from June 30, 2011, the date that the stay expires, to December 31, 2011; and
- Approving the Monitor's activities, as described in this Report.

## **2. BACKGROUND**

Eddie Bauer US and the Company (jointly, the "Eddie Bauer Group") sold outerwear, apparel and accessories, as well as down products for the home, including comforters, pillows and throws. Eddie Bauer Holdings, Inc. was a publicly traded company, the shares of which were listed on the NASDAQ Global Market under the trading symbol "EBHI". The Eddie Bauer brand is internationally recognized and Eddie Bauer products are available at approximately 370 retail and outlet stores, including approximately 36 retail stores located throughout Canada, one Canadian warehouse store, catalogue sales and on the Eddie Bauer Group's website. At the commencement of these proceedings, the Company employed approximately 933 individuals in Canada.

### **2.1 The Transaction**

At a joint hearing conducted on July 22, 2009, the US Court and this Honourable Court approved a transaction ("Transaction") between the Eddie Bauer Group and Everest Holdings LLC, an affiliate of Golden Gate Private Equity, Inc. (the "Purchaser"). The Transaction included, among other things, the purchase and sale of all of the Company's business and assets. The purchase price was US\$286 million, of which US\$11 million (the "Canadian Proceeds") was allocated to the Company's assets. The Transaction closed on August 3, 2009 and the Canadian Proceeds were paid to the Monitor and deposited into a trust account which it controls (the "Trust Account").

The Transaction did not set out an allocation of the Canadian Proceeds between Tenere and Yuma. Pursuant to a Court order dated May 12, 2010, the Court approved an allocation of the Canadian Proceeds of approximately US\$10.923 million (99.3%) to Tenere and US\$77,000 (0.7%) to Yuma.

## **2.2 Claims Procedure**

Pursuant to a Court order dated July 22, 2009, the Monitor conducted a claims procedure which solicited pre-filing claims against the Company, post-filing restructuring claims and claims against the Company's directors and officers (the "Claims Procedure"). The results of the Claims Procedure were detailed in previous reports to Court, and are summarized as follows:

- The Company has no secured creditors;
- The principal creditor of Tenere is EBHI Trust – its admitted claim totalled approximately US\$11.2 million (C\$12 million). This claim was subsequently amended to approximately US\$13 million (C\$14 million using the exchange rate specified by the Claims Procedure of US\$1 to C\$1.0777), as discussed in Section 4 of this Report;
- Tenere's other unsecured creditors were CRA, with an admitted claim of approximately \$195,000, and three creditors having claims totalling approximately \$1,200. These unsecured claims have been paid in full; and
- CRA is the sole creditor of Yuma. CRA filed claims against Yuma totalling approximately \$6.3 million, of which approximately \$250,000 is undisputed and was admitted as an unsecured claim.

The limited number of claims filed in the Claims Procedure resulted from the assumption by the Purchaser of the majority of the Company's landlord and vendor obligations. Additionally, the Initial Order authorized the Company to pay for pre-filing goods and services, which payments were made over the course of these proceedings.



## **2.3 Distributions of the Canadian Proceeds and Certain Tax Refunds**

Pursuant to orders of this Honourable Court made on May 12, 2010 and August 12, 2010, the Monitor has distributed:

- Approximately US\$11.2 million<sup>2</sup> to EBHI Trust to be applied against its unsecured claim against Tenere;
- Approximately \$1,200 to the holders of three admitted unsecured claims against Tenere. CRA has released refunds owing to Tenere, net of CRA's admitted claim against Tenere (\$195,000); and
- US\$70,000 to CRA to be applied against its admitted claim against Yuma.

These distributions leave EBHI Trust as the sole remaining creditor of Tenere. CRA is the sole remaining creditor of Yuma; however, there are no remaining funds or realizable assets in Yuma's estate.

## **3. ASSETS UNDER ADMINISTRATION**

### **3.1 Cash**

There is presently approximately \$5.7 million in the Monitor's Trust Account. All of the Canadian Proceeds have been distributed to the Company's creditors. The balance of the funds represent the proceeds of provincial and federal tax refunds collected on behalf of Tenere. A statement of receipts and disbursements for the period ending June 8, 2011 is attached as Appendix "B".

### **3.2 Potential Tax Refunds**

The Monitor has corresponded routinely with Deloitte & Touche Inc. ("Deloitte"), the Company's tax advisor, in respect of potential tax refunds that may be owing to Tenere. The

---

<sup>2</sup> Comprised of US\$9.98 million and C\$1.22 million.

Monitor has received approximately \$7.4 million of such refunds to date and is expecting additional federal and provincial tax refunds of approximately \$200,000.

In addition to the tax refunds being pursued by Deloitte, there is an ongoing Competent Authority transfer pricing refund request being administered by Gowling Lafleur Henderson LLP (“Gowlings”). Gowlings was engaged on a contingency fee basis in accordance with a Court order made on December 8, 2009. The Monitor understands that this refund could be significant; however, the timing and quantum of the refund is uncertain. As at the date of this Report, the Competent Authority transfer request has been filed by Gowlings and it continues to pursue the refund with CRA. The Monitor understands that the timeline for refunds of this nature is protracted given that, *inter alia*, they include cross-border communications and administration between CRA and the US Internal Revenue Service.

Other than the funds on deposit in the Trust Account and these potential tax refunds, the Monitor is not aware of any significant assets remaining to be realized upon.

#### **4. AMENDED CLAIM OF EBHI TRUST**

As discussed in the Monitor’s tenth report to Court dated December 7, 2010, the Monitor, Deloitte, Alvarez & Marsal (“Alvarez”), Eddie Bauer US’ financial advisor, and the Company’s former accounting personnel have been engaged in the process of reconciling certain accounting and tax accounts between the books and records of the Company and EBHI Trust. The initial claim filed by Amargosa did not consider certain foreign exchange gains/losses between Eddie Bauer US and Tenere which came to light when the Company’s 2009 and other pre-filing tax returns were being prepared and reconciled with those of Eddie Bauer US. The reconciliation process is now complete and resulted in EBHI Trust filing an amended proof of claim on June 1, 2011 for approximately US\$13 million (the

“Amended Claim”). The Amended Claim represents an increased claim of approximately US\$1.8 million<sup>3</sup>. The Company and the Monitor were involved in the reconciliation process and have reviewed the Amended Claim, including the supporting documentation and analyses. The Amended Claim has been admitted in the Claims Procedure.

## 5. CRA SETTLEMENT AGREEMENT

At the stay extension motion before this Honourable Court on December 14, 2010 (the “December 14<sup>th</sup> Motion”), CRA expressed its intention to object to any distribution being made to EBHI Trust as shareholder while CRA’s claims against Yuma remain unpaid. CRA advised that it intended to use a “substantive consolidation” argument in relation to the Tenere and Yuma estates as the basis for its position.

Following the December 14<sup>th</sup> Motion, the Company, CRA, the Monitor and their respective legal counsel exchanged correspondence on this issue. As a result of these discussions and negotiations, CRA and the Company have entered into the Settlement Agreement, pursuant to which, *inter alia*:

- CRA has agreed that it will not object to any distributions from Tenere to EBHI Trust or other stakeholders of Tenere;
- CRA has acknowledged that all remaining funds held by the Monitor on behalf of Tenere are assets of Tenere and that CRA has no claim in respect thereof;
- \$75,000 is to be paid by Tenere to CRA; and
- The approval of this Honourable Court is the sole condition precedent to the Settlement Agreement, following which the Monitor is to remit \$75,000 from the Trust Account to CRA.

A copy of the Settlement Agreement is attached as Appendix “C”.

---

<sup>3</sup> Translates to approximately C\$1.93 million using the foreign exchange rate specified in the Claims Procedure (1.0777).

## 5.1 Recommendation re: Settlement Agreement

The Monitor recommends that this Honourable Court approve the Settlement Agreement on the basis that EBHI Trust, being the sole creditor of Tenere, has consented to the Settlement Agreement. In addition, the Settlement Agreement avoids litigation costs that Tenere would incur, which would likely exceed the amount payable to CRA under the Settlement Agreement.

## 6. PROPOSED DISTRIBUTIONS

The Company is seeking approval to fund distributions totalling approximately \$5.4 million, comprised of the following:

| Description                               | (C\$)      |                            |                |           |
|---|------------|----------------------------|----------------|-----------|
|   | EBHI Trust | CRA<br>(withholding taxes) | CRA<br>(other) | Total     |
| Distribution to EBHI Trust as creditor    | 1,888,613  | 91,023                     | -              | 1,979,636 |
| Distribution to EBHI Trust as shareholder | 2,531,250  | 843,750                    | -              | 3,375,000 |
| Payment to CRA re Settlement Agreement    | -          | -                          | 75,000         | 75,000    |
| Total – Proposed Distributions            | 4,419,863  | 934,773                    | 75,000         | 5,429,636 |

The basis for each distribution included in the above table is provided in the following sections of this Report.

### 6.1 EBHI Trust

#### 6.1.1 Distribution as Creditor

The Proposed Distribution to EBHI Trust of approximately \$1.9 million<sup>4</sup> (translated to Canadian dollars using the exchange rate specified under the Claims Procedure) represents the unpaid portion of the Amended Claim. The Amended Claim includes unpaid interest and royalties totalling approximately \$364,000, on which a 25% withholding tax is payable

<sup>4</sup> Net of withholding taxes on accrued interest and royalties.

to CRA. As noted above, the Amended Claim has been admitted under the Claims Procedure.

### **6.1.2 Distribution as Shareholder**

Subject to the payment of the remaining portion of the Amended Claim, all claims against Tenere have been paid in full. After payment of the CRA settlement amount and the distribution to EBHI Trust on its Amended Claim (together with the related withholding taxes), there would be approximately \$3.65 million in the Trust Account. Accordingly, the Company is seeking approval for a \$3.375 million distribution to EBHI Trust in its capacity as Tenere's sole shareholder. Of the \$3.375 million proposed distribution, \$843,750 (25%) is payable to CRA for withholding taxes.

The Company is also seeking this Honourable Court's approval to make further distributions to its shareholder, EBHI Trust, without further order of this Honourable Court, should additional monies become available through the potential tax refunds discussed in Section 3.2, or otherwise. Any further distributions to EBHI Trust as shareholder would also be subject to a 25% withholding tax payable to CRA.

## **6.2 CRA**

### **6.2.1 Withholding Taxes**

A 25% withholding tax is payable to CRA on the portion of the Amended Claim related to accrued interest and royalty expenses (approximately \$364,000). The amount of the withholding tax owing to CRA in respect of these obligations totals \$91,023.

In addition, there are withholding taxes payable to CRA on any distributions to EBHI Trust in its capacity as shareholder, to the extent that the distributions exceed Tenere's paid-up-capital, being \$1. The Company's tax advisors have advised that the withholding tax rate on

shareholder distributions can range from 5% to 25% depending on, *inter alia*, the residency status and treaty eligibility of the beneficiaries of EBHI Trust. Since the number of beneficiaries is significant, it was determined to be impractical and costly to assess these and other attributes for each beneficiary - such an exercise would not be cost effective nor would it eliminate the risk of penalties being assessed against Tenere for failing to withhold the applicable taxes. As a result, the Trustee of EBHI Trust instructed the Company to withhold 25% of the dividend, being the maximum withholding tax that may be owing. Should the beneficiaries of EBHI Trust wish to claim treaty benefits in order to have a portion of the withholding taxes refunded, the Trustee of EBHI Trust will advise these beneficiaries the mechanism by which these parties can apply for such refunds, if applicable. The total amount of withholding taxes that are to be remitted to CRA in connection with the proposed dividend paid to EBHI Trust is \$843,750.

### **6.2.2 Payment under Settlement Agreement**

The Company is seeking approval to fund the amount payable to CRA under the Settlement Agreement (\$75,000). For the reasons set out in Section 5.1 of this Report, the Monitor is of the view that the Settlement Agreement is appropriate.

### **6.3 Holdback**

The Proposed Distributions would leave approximately \$250,000 in the Trust Account, being the amount withheld for costs to completion of these proceedings<sup>5</sup>. The Administration Charge (as defined in the Initial Order) was reduced to \$250,000 pursuant to a Court order made on August 12, 2010.

---

<sup>5</sup> As at the date of this Report, the professional fees have been paid current.

#### **6.4 Recommendation re: Proposed Distributions**

The Monitor is of the view that the Proposed Distributions are appropriate given that the administration of the Claims Procedure is complete and the holdback is sufficient to cover any potential priority claims under the Administration Charge. In addition, there are no secured creditors and the other two charges created under the Initial Order, being the Intercompany Charge and the Directors' Charge, were discharged and released previously in these proceedings.

### **7. COMPANY'S REQUEST FOR AN EXTENSION**

The Monitor supports the Company's request for an extension of the stay of proceedings for the following reasons:

- The Company is acting in good faith and with due diligence; and
- An extension will provide the Company and the Monitor with the opportunity to work with Deloitte and Gowlings to pursue the tax refunds that may be owing to the Company, as described in Section 3.2 of this Report.

Given the nature of the outstanding issues, being tax matters which typically require time to resolve, the Monitor believes an extension of the stay of proceedings until December 31, 2011 would be appropriate.

#### **7.1 Cash Flow**

A cash flow projection has not been prepared for the stay extension period. The remaining costs in these proceedings (largely professional fees) are to be funded from the funds in the Trust Account which are subject to the Administration Charge.

## 8. OVERVIEW OF THE MONITOR'S ACTIVITIES

In addition to the activities described in this Report, the Monitor's activities have included:

- Corresponding extensively with Deloitte and the Company's former inhouse tax advisors, regarding tax issues;
- Corresponding with Deloitte and Alvarez in connection with the reconciliation between the books and records of the Company and those of Eddie Bauer US;
- Corresponding with Deloitte in connection with the preparation of the Company's 2010 tax returns;
- Reviewing the Company's fiscal 2010 tax returns for the periods ending April 5, 2010 and December 31, 2010;
- Corresponding with Deloitte, Alvarez and the Company regarding the tax matters detailed in this Report;
- Reviewing correspondence between CRA and the Company's legal counsel in connection with the Settlement Agreement;
- Reviewing and commenting on a Notice of Appeal filed with the Tax Court of Canada between Yuma and Her Majesty the Queen on March 8, 2011;
- Reviewing and commenting on a schedule of Proposed Distributions and discussing with legal counsel implications of certain of the distributions;
- Corresponding with Bederson & Company LLP ("Bederson"), the US based accountants for EBHI Trust, and facilitating Bederson's information requests;
- Corresponding with representatives of Gowlings with regard to the Competent Authority refund application process;
- Facilitating payments, filing tax returns and following up on potential tax refunds on behalf of the Company in accordance with a Court order dated August 20, 2009;
- Completing the administration of the Claims Procedure in accordance with the Claims Procedure Order, particularly as it relates to the Amended Claim filed by EBHI Trust;
- Responding to creditor inquiries regarding the CCAA proceedings and the Claims Procedure;



- Placing on the Monitor's website copies of materials filed in these proceedings;
- Corresponding with counsel concerning the issues described in this Report;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

## 9. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(f) of this Report.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in black ink that reads "RSM Richter Inc." in a cursive, flowing script.

**RSM RICHTER INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
TENERE OF CANADA, INC. AND  
YUMA CUSTOMER SERVICES INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “B”**

**Tenere of Canada, Inc. and Yuma Customer Services Inc.**  
**Statement of Receipts and Disbursements**  
**For the Period June 17, 2009 to July 8, 2018**

|  | <b>USD Account</b> | <b>CAD Account</b>      |
|--|--------------------|-------------------------|
| <b>Receipts</b>                                |                    |                         |
| Proceeds of sale of assets                     | 11,000,000         | -                       |
| Tax refunds                                    | -                  | 15,340,853              |
| Transfers between estate accounts              | (955,392)          | 1,069,606               |
| Sundry collections                             | 100                | 133,254                 |
| Interest income                                | 9,684              | 54,820                  |
|  | <u>10,054,392</u>  | <u>16,598,532</u>       |
| <b>Disbursements</b>                           |                    |                         |
| Court approved distributions                   |                    |                         |
| Amargosa, Inc.                                 | 9,983,500          | 1,374,020               |
| EBHI Liquidating Trust                         | -                  | 6,804,863               |
| Canada Revenue Agency                          | 70,000             | 1,854,773               |
| Other creditors                                | 185                | 1,026                   |
| Professional fees                              |                    |                         |
| Monitor  | -                  | 785,008                 |
| Legal fees and disbursements - Company counsel | -                  | 511,736                 |
| Legal fees and disbursements - Monitor counsel | 281                | 111,518                 |
| Tax advisory and contingency fees              | -                  | 3,489,946               |
| GST/HST on disbursements                       | -                  | 160,712                 |
| PST remittances                                | -                  | 229,926                 |
| Publication costs                              | -                  | 20,570                  |
| Payroll obligations                            | -                  | 2,771                   |
| Miscellaneous expenses                         | 426                | 13,246                  |
|  | <u>10,054,392</u>  | <u>15,360,115</u>       |
| <b>Balance in Trust Accounts</b>               | <u><u>-</u></u>    | <u><u>1,238,417</u></u> |